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**JUL 13 2001**

July 13, 2001

**FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY**

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, D.C. 20554

**DOCKET FILE COPY ORIGINAL**

Re: In the Matter of Rules and Policies Regarding Calling  
Number Identification Service—Caller ID, CC Docket No. 91-281.

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Dear Ms. Salas,

Pursuant to Section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, please find enclosed the Petition for Waiver and Proposed Order of INSIGHT 100, Inc. in the above-captioned matter.

If you have any questions regarding this filing, please do not hesitate to contact me.

Sincerely,



Stephen J. Rosen

No. of Copies rec'd at 4  
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**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

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**FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY**

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In the Matter of )

Rules and Policies Regarding Calling )  
Number Identification Service— )  
Caller ID )  
\_\_\_\_\_

CC Docket No. 91-281

**PETITION FOR WAIVER OF INSIGHT 100, INC.**

Colleen Boothby  
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Levine, Blaszak, Block & Boothby, LLP  
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Counsel for  
INSIGHT 100, Inc.

July 13, 2001

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## **Summary**

INSIGHT 100, Inc. ("INSIGHT 100") is a non-profit corporation whose members provide non-public communications services to large sites or campuses, including universities and hospitals. These communications services are provided in part through the use of central office ("CO") class equipment that is operated by INSIGHT 100 members. Many of the member institutions also provide residential facilities for students and patients and deliver emergency response and other public safety services to their residents.

The INSIGHT 100 members' delivery of their security and emergency response services has been hampered by their inability to use features of their CO-class devices known as "Customer Originated Trace" ("COT") and system "traps." These features rely on access to callers' calling party number ("CPN") and privacy indicator data, and allow the operator of the CO-class device to determine on a real-time basis the origin of telephone calls processed by the equipment. Carriers serving INSIGHT 100 members have, however, refused to pass CPN and privacy indicator data to the members' switches, citing Section 64.1601(b) of the Commission's rules.

Therefore, INSIGHT 100 requests a limited waiver of Section 64.1601(b) regarding the transmission of calling party number ("CPN") by carriers that terminate calls at a narrowly defined class of facilities.

This request for waiver satisfies the two-part standard established by the Commission and the courts. First, waiver serves the public interest because it will enable INSIGHT 100 members and similarly situated entities to better protect

the health and safety of their residents. Second, “special circumstances” warrant deviation from Rule 64.10601(b) because: (1) the INSIGHT 100 member, not the carrier, is the provider of both the end office equivalent communications and the public safety services that rely upon CPN; and (2) the privacy interests of incoming callers are preserved, since entities subject to the waiver would be required to recognize the privacy flags of incoming calls, and to protect the confidentiality of calling party information.

To ensure that granting of the waiver is limited to the public interest purposes described above, and to ensure non-discriminatory application of the waiver, INSIGHT 100 requests that the Commission grant a waiver of Section 64.1601(b) only to an entity who meets all of the following criteria: (1) it is a hospital and/or a university; (2) it provides residential facilities or services within a defined geographic area under its control; (3) it has primary responsibility for emergency response and/or security services provided to area residents; and (4) it provides telecommunications services to its residents through the use of CO-class equipment capable of interpreting a privacy flag.

Finally, to protect against inadvertent disclosure of CPN, INSIGHT 100 requests that the Commission require entities who avail themselves of the waiver to implement certain privacy protection measures. These measures include limiting access to trace logs that contain CPN, requiring staff members to enter into non-disclosure agreements regarding CPN, and destroying call trace logs after a reasonable period of time.

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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Rules and Policies Regarding Calling )  
Number Identification Service— )  
Caller ID )  
\_\_\_\_\_ )

CC Docket No. 91-281

**PETITION FOR WAIVER OF INSIGHT 100, INC.**

INSIGHT 100, Inc. ("INSIGHT 100") respectfully requests a limited waiver of Section 64.1601(b) of the Commission's rules governing the transmission of calling party number ("CPN") by carriers on the terminating end of a call. INSIGHT 100 requests the waiver to permit certain operators of CO-class equipment to receive CPN on terminating calls as part of the PRI or SS7 capabilities of the equipment.

**I. Introduction**

INSIGHT 100 is a non-profit, non-stock Connecticut corporation consisting of educational institutions, hospitals, businesses, and other organizations. INSIGHT 100 members provide non-public communications services to unique, closed groups of users consisting of students and/or patients and staff at large sites or campuses. Unlike most end users, INSIGHT 100 members operate central office ("CO") class equipment in order to provide telecommunications

service to their large groups of users.<sup>1</sup> Such CO-class devices function as end office equivalents for the lines they serve. Like any other end office switch, these devices have the ability to capture CPN and privacy indicators transmitted to the switch by the terminating carrier and to block transmission of CPN at the switch if required by the privacy indicator.

A significant number of INSIGHT 100 members also share another unique characteristic: they provide extensive residential facilities to students and patients and are responsible for the delivery of emergency response and public safety services within the geographic limits of the sites served by their CO-class equipment, e.g., university campuses, affiliated student housing, and health care facilities. In particular, the INSIGHT 100 membership includes (but is not limited to) a number of state and private universities<sup>2</sup> and many public and private hospitals and medical systems.<sup>3</sup>

The ability of these institutions to perform their security and emergency response duties has been severely impaired by their inability to fully use features of their CO-class devices known as "Customer Originated Trace" ("COT") and

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<sup>1</sup> All Insight 100 members operate Nortel Networks MSL100 PBXs.

<sup>2</sup> University members include: Auburn University, Baylor College of Medicine, Boston College, Brown University, Central Michigan University, Colorado State University, Emory University and Associated Health Care Systems, Florida State University, Hofstra University, Indiana University, IUPUI, Northern Illinois University, Northwestern University, The Ohio State University, Princeton University, Purdue University, Stanford University, UCLA and Associated Health Care Systems, University of Alabama at Birmingham, University of Alabama at Tuscaloosa, University of California at Davis, University of Maine, University of Michigan, University of Northern Colorado, University of Texas at Austin, University of Wyoming, and Western Illinois University.

<sup>3</sup> Hospital and medical center members include: Allegheny-General Hospital, Cedars-Sinai Medical Center, The Children's Hospital of Philadelphia, Grady Memorial Hospital, Health System Minnesota, Kaiser Permanente, New York Presbyterian Hospital, Partners Healthcare Systems, and Banner Health Arizona.

system "traps." COT and traps enable operators of CO-class equipment to determine on a real-time basis the origin of telephone calls processed by the equipment. In order to use the COT function, however, the equipment operator must receive from interconnecting carriers the CPN associated with calls terminating at their site. Without access to this CPN, the university and hospital emergency response and security forces cannot use COT functions to determine the identity of a caller on a real-time basis, which can be essential to protecting on-campus residents or staff from threats or dispatching emergency assistance to a caller for whom the university or hospital is responsible.

The following examples illustrate the need for emergency response personnel and security forces to have real-time access to CPN at the CO-equivalent facility, rather than being dependent on an after-the-fact retrieval of data from the carrier's switch:

- Stanford University recently enrolled two students whose high-profile parents—President Clinton and Independent Counsel Kenneth Starr—made them targets of harassing or threatening calls placed to the University's main switchboard. Because of the high volume of all calls placed to that number, the process of identifying and retrieving from the carrier end office the CPN associated with the threatening calls was a complicated and time-consuming exercise that impeded investigative and protection efforts. The exercise would have been avoided, and the effort required to protect these students would have been reduced, if Stanford had been able to use the COT functionality of its switch.
- Operators at the UCLA Hospital Complex and The Children's Hospital of Philadelphia periodically receive calls from disturbed patients who threaten to harm themselves or others. Currently, the only way to get information about the caller's location is to keep the patient on the line long enough to work through the carrier to obtain CPN, which is not always possible. Since these calls very rarely occur during regular business hours when carrier employees are available, additional delays result from the need to find an on-call employee of the carrier to begin the tracing process.



- The UCLA Hospital Complex and The Children's Hospital of Philadelphia also have calls for assistance from geriatric patients, small children, or people who do not speak English, thereby making it difficult to obtain a call back number. In particular, there have been at least three occasions within the last five years where UCLA staff needed to call for ambulance/paramedic assistance for a caller who was too distraught or confused to hang up and call 911 himself/herself. Without the COT functionality in their own switch, UCLA staff could obtain the relevant telephone numbers from the carrier only after unnecessary and potentially life-threatening delay.
- Since 1999, the University of Texas at Austin has experienced 80 cases of telephone stalking or harassment that it was unable to resolve quickly for lack of real-time information at the time the calls were made. In one case, the urgency of resolving the case quickly was especially acute because the caller demonstrated familiarity with the victim's daily routine. A standard trace device could indicate only that the calls originated from an off-campus number assigned to a customer designated "SWB01," which is the name of the trunking facility on the University of Texas switch. This was due to the fact that when no privacy information is sent by the terminating carrier, the terminating carrier's switch substitutes the facility name for the CPN. A subpoena to Southwestern Bell was required to determine that the number was one of a block of numbers assigned to a reseller. A second subpoena was required for the reseller to identify the customer, who eventually confessed to making the phone calls. During the lengthy period required for successive subpoenas, the victim of the call was needlessly terrorized.

Carriers serving INSIGHT 100 members have refused to pass CPN and privacy indicator data to the members' switches on the grounds that Section 64.1601(b) of the Commission's rules prohibits them from doing so. In at least one case, a carrier serving an INSIGHT 100 member relied on this rule when it refused to provide SS7 services, effectively limiting activation of the SS7 capabilities of the member's switch.

## II. Standard for Waiver

The Common Carrier Bureau has been vested with the delegated authority to rule on petitions for waiver of the Caller ID Rules.<sup>4</sup> The Commission or its delegee may waive any of the Commission's rules if there is "good cause" to do so.<sup>5</sup> Waiver is appropriate if: (1) such deviation would better serve the public interest than would strict adherence to the general rule; and (2) special circumstances warrant a deviation from the general rule.<sup>6</sup> Circumstances that would justify a waiver include "considerations of hardship, equity, or more effective implementation of overall policy."<sup>7</sup> Also, if the Commission grants waivers, it must identify and articulate reasonable standards that are predictable, workable, and not susceptible to discriminatory application.<sup>8</sup> Generally, the Commission may grant a waiver of its rules in a particular case only if the relief requested would not undermine the policy objective of the rule in question, and would otherwise serve the public interest.<sup>9</sup>

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<sup>4</sup> *Rules and Policies Regarding Calling Number Identification Service—Caller ID* (Order), 10 FCC Rcd 13819, ¶ 9 (1995).

<sup>5</sup> See Section 1.3 of the Commission's Rules, 47 C.F.R. § 1.3. See also *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), *appeal after remand*, 459 F.2d 1203 (D.C. Cir. 1972), *cert. denied*, 409 U.S. 1027 (1972) ("*WAIT Radio*"); *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990) ("*Northeast Cellular*").

<sup>6</sup> *Northeast Cellular*, 897 F.2d at 1166. See also *Comsat Corporation, Petition for Partial Relief from the Current Regulatory Treatment of Comsat World Systems' Switched Voice, Private Line, and Video and Audio Services* (Order), 11 FCC Rcd 9622, ¶ 10 (1996); *Petition of General Communications, Inc. for a Partial Waiver of the Bush Earth Station Policy* (Memorandum Opinion and Order), 11 FCC Rcd 2535, ¶ 4 (Int'l Bur. 1996).

<sup>7</sup> *WAIT Radio*, 418 F.2d at 1159.

<sup>8</sup> *Northeast Cellular*, 897 F.2d at 1166.

<sup>9</sup> *WAIT Radio*, 418 F.2d at 1157; *Dominion Video Satellite, Inc.* (Order and Authorization), 14 FCC Rcd 8182, ¶ 5 (Int'l Bur., 1999).

### III. Public Safety and Security Requires a Waiver of Section 64.1601(b) for Public Residential Institutions That Operate Central Office Equipment

Section 64.1601(b) states that “Carriers must arrange their CPN-based services, and billing practices, in such a manner that when a caller requests that the CPN not be passed, a carrier may not reveal that caller’s number or name, nor may the carrier use the number or name to allow the called party to contact the calling party.”<sup>10</sup> The purpose of this rule is to allow “the calling public to exercis[e] a measure of control over the dissemination of telephone numbers.”<sup>11</sup>

The Commission has previously determined, however, that the need to ensure public safety can, under certain circumstances, take precedence over a caller’s ability to maintain the privacy of his or her telephone number. In particular, the Commission concluded in its order adopting the rule that, “To the extent that CPN based services are used to deliver emergency services, we find that privacy requirements for CPN based services should not apply to delivery of the CPN to a public agency’s emergency line, a poison control line, or in conjunction with 911 emergency services.”<sup>12</sup>

Against this background, the waiver requested by INSIGHT 100 in this instance satisfies the standard established by the Commission and the courts. First, the “public interest” is served by waiving this rule for the INSIGHT 100 members and similarly situated entities because the waiver will enable these

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<sup>10</sup> 47 C.F.R. § 64.1601(b).

<sup>11</sup> *Rules and Policies Regarding Calling Number Identification Service—Caller ID* (Report and Order and FNPRM), 9 FCC Rcd 1764, ¶ 34 (1994) (“1994 Order”).

<sup>12</sup> 1994 Order, ¶ 37.

entities to better protect the health and safety of the persons to whom they provide residential facilities and emergency response services. Further, “deviation” from Rule 64.10601(b) “better serves the public interest” under these “special circumstances” because: (1) it would better protect the health and safety of the residents of the institutions covered by this waiver by providing rapid and appropriate responses to distress calls and threatening or abusive calls; (2) the INSIGHT 100 member, not the carrier, is the provider of both the end office equivalent communications service and the public safety functions that are impaired by any delay in obtaining CPN; and (3) the privacy interests of incoming callers are preserved, as entities subject to the waiver would be required to honor the privacy flags of incoming calls, and to implement safeguards to protect the confidentiality of calling party information. Therefore, the requested waiver protects both public safety and privacy—two key elements of the public interest. Finally, because only a narrow and well-defined class of institutions qualify for this waiver, the standard is predictable and workable, discriminatory application will be avoided, and future parties will be on notice of the precise scope of the waiver and the concrete requirements to be eligible for the waiver.

Moreover, petitioners are providers of precisely the emergency services contemplated by the Commission’s *1994 Order*. Therefore the policies underlying the existing rules would be served by a waiver creating a similar exemption from the privacy requirements for the narrow class of public institutions described in this petition. As discussed above, the petitioners require access to the CPN of incoming callers, both to provide real-time assistance to

callers to campus security or health care services that are in distress, and to apprehend, or assist other civil authorities in the apprehension of, threatening callers. Because of Section 64.1601(b) of the Commission's Rules, however, the carriers serving these institutions are not permitted to provide them with the CPN they could use to deliver emergency response and security services more effectively.

#### **IV. Scope of Waiver**

In order to allow carriers to provide these universities and hospitals with CPN, thereby allowing these institutions to better safeguard their residents, the INSIGHT 100 Group requests that the Commission grant a limited waiver of Section 64.1601(b). To ensure that the waiver is no broader than necessary to address the justifying circumstances described above, and to ensure non-discriminatory application of the waiver, INSIGHT 100 requests that the Commission waive Section 64.1601(b) only as to entities who meet *all* of the following criteria:

- The entity is a hospital and/or a university.
- The entity provides residential facilities or services within a defined geographic area under the control of the institution;
- The entity has primary or exclusive responsibility for the emergency response and/or security services provided to residents of the area; and
- The entity provides telecommunications services within the geographic area by operating CO-class equipment that is capable of receiving and properly interpreting the Privacy Indicator.

The INSIGHT 100 Group does not seek authority to use CPN for any purpose other than the emergency response or security services identified

above. Thus, the waiver should be narrowly tailored to permit carriers to provide CPN information only to entities that: (1) meet the aforementioned institutional criteria; and (2) comply with the Commission's rules requiring suppression of CPN to the called party when the incoming call is marked "private."

By limiting the waiver to parties who meet all of the above criteria, the Commission can ensure that entities who qualify for the waiver have no incentive to unlawfully exploit the CPN information they will receive. They will not be ventures engaged in marketing or other activities for which private CPN is commercially useful.

To protect against inadvertent disclosure of CPN, INSIGHT 100 respectfully suggests that the Commission require entities who avail themselves of the waiver to implement the following privacy protection measures. First, access to the electro-magnetic (disk) files that contain call trace logs (including the CPN of incoming callers) must be restricted. These restrictions on access must include use of a dedicated device to log the call traces, physical restrictions on access to the computer terminals that can view these calling logs, and logical restrictions such as password protection and a limited number of designated staff whose privilege level allows them computer access to calling logs. Second, staff with access to the call trace logs must be limited to the switch technicians who routinely manipulate the logs and their upper management. These staff members must also be required to enter into non-disclosure agreements regarding CPN, the violation of which could lead to dismissal from employment and monetary penalties. Third, any lawful requests from law enforcement

agencies for print outs of call trace logs must be honored by a secure delivery of the call trace information to the law enforcement agency. Fourth, call trace logs must be retained for a reasonable period and then destroyed. Implementation of these safeguards will ensure that the CPN of incoming callers is not inadvertently revealed to unauthorized parties.<sup>13</sup>

## **V. Conclusion**


Granting the instant *Petition* will serve the public interest by helping to ensure the health and safety of a significant number of Americans while only minimally impacting on the privacy of the calling public. In particular, waiving Section 64.1601(b) for the narrow class of institutions described in this *Petition* will allow hospital and university public safety personnel to respond more rapidly and more appropriately to many emergencies, thereby greatly enhancing the safety of the residents of these institutions. Affording INSIGHT 100 this relief will have only a negligible impact on caller privacy because no entity will be eligible for this waiver unless it is capable of, and agrees to, honor the privacy indicator on all incoming calls, and agrees to institute a number of stringent measures

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<sup>13</sup> The Commission has authority to enforce these conditions against non-carriers if they fail to comply with them. Under Section 411 of the Communications Act, the FCC has authority to pursue proceedings against non-carriers and impose the same remedies that can be imposed on carriers. See 47 U.S.C. § 411 (the FCC can “include as parties, in addition to the carrier, all persons interested in or affected by the ... practice under consideration, and inquiries, investigations, orders and decrees may be made with reference to and against such additional parties in the same manner, to the same extent, and subject to the same provisions as are or shall be authorized by law with respect to carriers”); *Ambassador v. United States*, 325 U.S. 317, 325 (1945) (citing Section 411 and upholding the Commission’s exercise of jurisdiction over surcharges imposed by hotels, apartments, and clubs on end user guests and tenants for interstate and foreign telephone calls). Thus, in any FCC action to enforce disclosure and use restrictions (to which the carrier would, of course, be a party though not necessarily with any liability), the FCC would have jurisdiction and enforcement authority over the non-carrier who has violated the FCC’s rules and the carrier tariff providing for disclosure of CPN subject to the waiver conditions.

designed to prevent the unauthorized disclosure of calling party data. Against this background, deviation from Section 64.1601(b) better serves the public interest than strict adherence to the general rule, and special circumstances warrant a deviation from the general rule.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Stephen J. Rosen". The signature is fluid and cursive, with a long horizontal stroke at the end.

Colleen Boothby  
Stephen J. Rosen  
Levine, Blaszak, Block & Boothby, LLC  
2001 L St., N.W., Suite 900  
Washington, D.C. 20036

Counsel for INSIGHT 100

July 13, 2001



### CERTIFICATE OF SERVICE

I, Michaelleen Williams, hereby certify that true and correct copies of the preceding Petition of Waiver for Insight 100, Inc. was served this July 13, 2001 by hand upon the following:

Ms. Magalie Roman Salas  
Office of the Secretary  
Federal Communications Commission  
Room TW-A324  
445 Twelfth Street, SW  
Washington, D.C. 20554

Ms. Dorothy Atwood  
Chief, Common Carrier Bureau  
Federal Communications Commission  
445 Twelfth Street, SW  
Washington, D.C. 20554

Mr. Gregory Cooke  
Assistant Chief, Network Service Division  
Federal Communications Commission  
445 Twelfth Street, SW  
Washington, D.C. 20554



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Michaelleen I. Williams  
Legal Assistant

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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In the Matter of )  
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Rules and Policies Regarding Calling )  
Number Identification Service— )  
Caller ID )  
\_\_\_\_\_ )

CC Docket No. 91-281

**MEMORANDUM OPINION AND ORDER**

**I. INTRODUCTION**

1. This Memorandum Opinion and Order addresses a petition filed by INSIGHT 100, Inc. ("INSIGHT 100") requesting a limited waiver of Section 64.1601(b) of the Commission's rules<sup>1</sup> governing the transmission of calling party number ("CPN") by carriers on the terminating end of a call ("*Petition*"). INSIGHT 100 requests the waiver to permit certain operators of CO-class equipment to receive CPN on terminating calls as part of the PRI or SS7 capabilities of the equipment.

2. For the reason's stated herein, we grant the limited waiver requested in the *Petition* subject to the conditions set forth in this Order.

**II. BACKGROUND**

3. INSIGHT 100 is a non-profit, non-stock Connecticut corporation consisting of educational institutions, hospitals, businesses, and other organizations. INSIGHT 100 members provide non-public communications services to unique, closed groups of users consisting of students or patients and staff at large sites or campuses. Unlike most end users, INSIGHT 100 members operate central office ("CO") class equipment in order to provide telecommunications service to their large groups of users. Such CO-class devices function as end office equivalents for the lines they serve. Like any other end office switch, these devices have the ability to capture CPN and privacy indicators transmitted to the switch by the terminating carrier and to block transmission of CPN at the switch if required by the privacy indicator.

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<sup>1</sup> 47 C.F.R. § 64.1601(b).

4. A significant number of INSIGHT 100 members also share another unique characteristic: they provide extensive residential facilities to students and patients and are responsible for the delivery of emergency response and public safety services within the geographic limits of the sites served by their CO-class equipment, e.g., university campuses, affiliated student housing, and health care facilities. In particular, INSIGHT 100 includes (but is not limited to) a number of state and private universities and many public and private hospitals and medical systems.

5. The ability of these institutions to perform their security and emergency response duties has been severely impaired by their inability to fully use features of their CO-class devices known as "Customer Originated Trace" ("COT") and system "traps." COT and traps enable operators of CO-class equipment to determine on a real-time basis the origin of telephone calls processed by the equipment. In order to use the COT function, however, the equipment operator must receive from interconnecting carriers the CPN associated with calls terminating at their site. Without access to this CPN, the university and hospital emergency response and security forces cannot use COT functions to determine the identity of a caller on a real-time basis, which can be essential to protecting on-campus residents or staff from threats or dispatching emergency assistance to a caller for whom the university or hospital is responsible.

6. Carriers serving INSIGHT 100 members have refused to pass CPN and privacy indicator data to the members' switches on the grounds that Section 64.1601(b) of the Commission's rules prohibits them from doing so. Therefore, INSIGHT 100 seeks a waiver of Section 64.1601(b).

### **III. DISCUSSION**

#### **A. Public Interest Standard**

7. The Common Carrier Bureau has been vested with the delegated authority to rule on petitions for waiver of the Caller ID Rules.<sup>2</sup> The Commission or its delegee may waive any of the Commission's rules if there is "good cause" to do so.<sup>3</sup> Waiver is appropriate if: (1) such deviation would better serve the public interest than would strict adherence to the general rule; and (2) special circumstances warrant a deviation from the general rule.<sup>4</sup> Circumstances that

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<sup>2</sup> *Rules and Policies Regarding Calling Number Identification Service—Caller ID* (Order), 10 FCC Rcd 13819, ¶ 9 (1995).

<sup>3</sup> See Section 1.3 of the Commission's Rules, 47 C.F.R. § 1.3. See also *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969), *appeal after remand*, 459 F.2d 1203 (D.C. Cir. 1972), *cert. denied*, 409 U.S. 1027 (1972) ("WAIT Radio"); *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164 (D.C. Cir. 1990) ("Northeast Cellular").

<sup>4</sup> *Northeast Cellular*, 897 F.2d at 1166. See also *Comsat Corporation, Petition for Partial Relief from the Current Regulatory Treatment of Comsat World Systems' Switched Voice, Private*

would justify a waiver include "considerations of hardship, equity, or more effective implementation of overall policy."<sup>5</sup> Also, if the Commission grants waivers, it must identify and articulate reasonable standards that are predictable, workable, and not susceptible to discriminatory application.<sup>6</sup> Generally, the Commission may grant a waiver of its rules in a particular case only if the relief requested would not undermine the policy objective of the rule in question, and would otherwise serve the public interest.<sup>7</sup>

### **B. Application of Standard**

8. Section 64.1601(b) states that "Carriers must arrange their CPN-based services, and billing practices, in such a manner that when a caller requests that the CPN not be passed, a carrier may not reveal that caller's number or name, nor may the carrier use the number or name to allow the called party to contact the calling party."<sup>8</sup> The purpose of this rule is to allow "the calling public to exercis[e] a measure of control over the dissemination of telephone numbers."<sup>9</sup>

9. The Commission has previously determined, however, that the need to ensure public safety can, under certain circumstances, take precedence over a caller's ability to maintain the privacy of his or her telephone number. In particular, the Commission concluded in its order adopting the rule that, "To the extent that CPN based services are used to deliver emergency services, we find that *privacy requirements for CPN based services should not apply* to delivery of the CPN to a public agency's emergency line, a poison control line, or *in conjunction with 911 emergency services*."<sup>10</sup>

10. The waiver requested by INSIGHT 100 in this instance satisfies the standard established by the Commission and the courts. First, the "public interest" is served by waiving this rule for the INSIGHT 100 members and similarly situated entities because the waiver will enable these entities to better protect the health and safety of the persons to whom they provide residential facilities and emergency response services. Further, "deviation" from Rule 64.10601(b) "better serves the public interest" under these "special

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*Line, and Video and Audio Services* (Order), 11 FCC Rcd 9622, ¶ 10 (1996); *Petition of General Communications, Inc. for a Partial Waiver of the Bush Earth Station Policy* (Memorandum Opinion and Order), 11 FCC Rcd 2535, ¶ 4 (Int'l Bur. 1996).

<sup>5</sup> *WAIT Radio*, 418 F.2d at 1159.

<sup>6</sup> *Northeast Cellular*, 897 F.2d at 1166.

<sup>7</sup> *WAIT Radio*, 418 F.2d at 1157; *Dominion Video Satellite, Inc.* (Order and Authorization), 14 FCC Rcd 8182, ¶ 5 (Int'l Bur., 1999).

<sup>8</sup> 47 C.F.R. § 64.1601(b).

<sup>9</sup> *Rules and Policies Regarding Calling Number Identification Service—Caller ID* (Report and Order and FNPRM), 9 FCC Rcd 1764, ¶ 34 (1994) ("1994 Order").

<sup>10</sup> 1994 Order, ¶ 37.

circumstances” because: (1) it would better protect the health and safety of the residents of the institutions covered by this waiver by providing rapid and appropriate responses to distress calls and threatening or abusive calls; (2) the INSIGHT 100 member, not the carrier, is the provider of both the end office equivalent communications service and the public safety functions that are impaired by any delay in obtaining CPN; and (3) the privacy interests of incoming callers are preserved, as entities subject to the waiver would be required to honor the privacy flags of incoming calls, and to implement safeguards to protect the confidentiality of calling party information. Therefore, the requested waiver protects both public safety and privacy—two key elements of the public interest. Finally, because only a narrow and well-defined class of public institutions qualify for this waiver, the standard is predictable and workable, discriminatory application will be avoided, and future parties will be on notice of the precise scope of the waiver and the concrete requirements to be eligible for the waiver.

11. Moreover, petitioners are providers of precisely the emergency services contemplated by the Commission’s *1994 Order*. Therefore the policies underlying the existing rules would be served by a waiver creating a similar exemption from the privacy requirements for the narrow class of public institutions described in this petition. As discussed above, the petitioners require access to the CPN of incoming callers, both to provide real-time assistance to callers to campus security or health care services that are in distress, and to apprehend, or assist other civil authorities in the apprehension of, threatening callers. Because of Section 64.1601(b) of the Commission’s Rules, however, the carriers serving these institutions are not permitted to provide them with the CPN they could use to deliver emergency response and security services more effectively.

### **C. Scope of Waiver**

12. To ensure that the waiver is no broader than necessary to address the justifying circumstances described above, and to ensure non-discriminatory application of the waiver, the Commission waives Section 64.1601(b) only as to entities who meet *all* of the following criteria: (1) the entity is a hospital or a university; (2) the entity provides residential facilities or services within a defined geographic area under the control of the institution; (3) the entity has primary or exclusive responsibility for the emergency response and/or security services provided to residents of the area; (4) the entity provides telecommunications services within the geographic area by operating CO-class equipment that is capable of receiving and properly interpreting the Privacy Indicator; and (5) the entity will comply with the Commission’s rules requiring suppression of CPN to the called party when the incoming call is marked “private.”

13. The Commission does not want and is not authorizing the entities subject to this waiver to use CPN for any purpose other than the emergency response or security services identified above. By limiting the waiver to parties who meet all of the above criteria, the Commission has ensured that entities who qualify for the waiver have no incentive to unlawfully exploit the CPN information they will

receive. Specifically, they are not ventures engaged in marketing or other activities for which CPN is commercially useful.

14. Finally, to protect against inadvertent disclosure of CPN, entities who avail themselves of the waiver must implement the following privacy protection measures. First, access to the electro-magnetic (disk) files that contain call trace logs (including the CPN of incoming callers) must be restricted. These restrictions on access must include use of a dedicated device to log the call traces, physical restrictions on access to the computer terminals that can view these calling logs, and logical restrictions such as password protection and a limited number of designated staff whose privilege level allows them computer access to calling logs. Second, staff with access to the call trace logs must be limited to the switch technicians who routinely manipulate the logs and their upper management. These staff members must also be required to enter into non-disclosure agreements regarding CPN, the violation of which could lead to dismissal from employment and monetary penalties. Third, any lawful requests from law enforcement agencies for print outs of call trace logs must be honored by transmitting the data to a printer located at the requesting law enforcement agency. Fourth, call trace logs must be retained for a reasonable period and then destroyed. Implementation of these safeguards will ensure that the CPN of incoming callers is not inadvertently revealed to unauthorized parties.

#### **IV. ORDERING CLAUSES**

15. Accordingly, IT IS ORDERED, pursuant to Section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, and the authority delegated in Sections 0.91 and 0.291 of the Commission's rules, 47 C.F.R. §§ 0.91 and 0.291, that INSIGHT 100's petition for waiver of the Commission's blocking code requirements as specified by Section 64.1601(b) of the Commission's rules, 47 C.F.R. § 64.1601(b), IS GRANTED to the extent described by this Order.

16. IT IS FURTHER ORDERED that this Order is effective upon adoption.